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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.1527 OF 2003

Rajesh Babulal Sahu)
residing at Shantinagar)
Sector No.3, Mira Road (East))
Dist. Thane)
Presently at Kolhapur Central Prison)
Kolhapur.).. APPELLANT

VERSUS

1) The State of Maharashtra)
(At the instance of Mira Road)
Police Station, vide C.R.No.)
I-136/2002 Sessions Case No.207/03.)

2) Minu Kulwantsingh Thakur)
At Post : Kuthadi, Tal. Bhuran)
Dist. Hamirpur, Himachal Pradesh).. RESPONDENTS

Dr.Yugmohit Choudhary for the Appellant.

Dr.F.R.Shaikh, Additional Public Prosecutor, for the Respondents.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 27TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The Appellant has been convicted and sentenced under Section 302 of the Indian Penal Code for having murdered one Kulwantsingh Thakur. The Appeal is directed against the judgment of the 4th Additional District and Sessions Judge, Thane dated 7th October 2003 passed in Sessions Case No.207 of 2003.

2. The Appellant was residing with his sister Kiran and brother-in-law in Mira Road, Thane. The deceased and his wife, Minu, were residing with Kiran and her family as paying guests. The prosecution alleges that on 8th October 2002, Kiran scolded her brother, the Appellant, for not making any efforts to secure a job. The Appellant quarrelled with his sister and brother-in-law. The deceased intervened in this quarrel and scolded the Appellant for having misbehaved with his sister. The Appellant challenged the deceased as he did not appreciate his intervention in his dispute with his sister. The deceased, who was a hefty person, kicked the Appellant on the chest, as a result of which the Appellant was thrown against the grill. The quarrel ended and the parties dispersed for their respective work. The prosecution alleges that at about 10.30 that night when Kiran's family including the Appellant and her other brother Kailash, his wife and the deceased and his wife were watching the television, the Appellant picked up a rod used for weight lifting and hit the deceased on the forehead. Kailash snatched the rod out of the Appellant's hand. The deceased was then removed to the hospital in an autorickshaw by his wife, the Appellant's sister and Kailash. On examining him, the Doctor declared that the victim had died. A complaint was thereafter lodged with the Police Station by the

wife of the deceased. The Appellant was arrested and charged with having murdered the deceased. His trial was committed to the 4th Additional District and Sessions Court, Thane.

3. The prosecution has examined only three witnesses at the trial. PW1, Kailash, was the friend of the deceased and the brother of the Appellant and Kiran. The prosecution has claimed that he was an eye witness to the incident. He has deposed that he and his wife had visited Kiran on 8th October 2002. He, his wife, Kiran, her husband, the deceased and his wife were all watching television when the deceased had lifted the weight lifting equipment, slipped on the tiles resulting in the rod of the equipment hitting his forehead. This witness has been declared hostile. His evidence is thus not helpful to the prosecution.

4. PW2 is the Doctor who performed the post mortem on the dead body of Kulwantsingh. He has described the injuries sustained. The injuries included the fracture of the skull and the brain matter being exposed. The third witness who has been examined is the complainant, the wife of the deceased. The entire case of the prosecution rests on the evidence of this witness. She has narrated the incident which occurred on 8th October 2002 in the morning between her deceased husband and the Appellant. She has in the cross-examination admitted

that no one had paid any attention to the Appellant while watching the television after 11.30 that night. She has admitted that she had not seen the Appellant rise from the place where he was seated watching the television. She has conceded that she had not seen the Appellant lift the rod and land a blow on the head of the deceased. She has also admitted that while watching television, all other lights had been switched off. This witness has stated that while she was taking her husband to the hospital, her clothes were stained with blood. This witness has then admitted that the articles used for weight lifting were normally kept in the hall where they all had assembled to watch the television. The rod was normally kept against the window adjoining the television.

5. We have perused the evidence on record, including the complaint which is at Exhibit 25. We find that one out of the three witnesses examined for the prosecution has turned hostile. The second witness, who is the Doctor, has spoken about the injuries caused. The third witness, who is the wife of the deceased, has spoken about her clothes being stained with the blood of the deceased while she was removing him to the hospital. However, there is no record to indicate that her clothes were seized and sent for chemical analysis. Besides the evidence of PW3, there is no evidence at all on record which connects the Appellant to the crime. The evidence

of PW3 indicates that the room was dark; all those present in the room were glued to the television and nobody was paying any attention to the others in the room. Whether the Appellant was in fact in the room or some other person had entered the room which was in darkness has not been established. In our opinion, there is no conclusive proof that the Appellant had struck a fatal blow on the deceased. Undoubtedly, an altercation had taken place between him and the deceased earlier in the morning. The deceased had kicked him in the chest. However, this by itself would not lead to the inference that the Appellant had killed the deceased.

6. The prosecution has not examined the Investigating Officer, for reasons best known to it. In our opinion, the prosecution has failed to establish the charge against the Appellant. The judgment and order of the trial Court will, therefore, have to be set aside.

7. Appeal allowed. The judgment and order dated 7th October 2003 passed by the 4th Additional District and Sessions Judge, Thane in Sessions Case No.207 of 2003 is set aside. The Appellant be released forthwith, it not otherwise required in law.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)